

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

HODELL-NATCO INDUSTRIES, INC.,	)	CASE NO. 1:08-CV-2755
	)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	<b>TRIAL BRIEF OF PLAINTIFF HODELL-</b>
	)	<b>NATCO INDUSTRIES, INC.</b>
SAP AMERICA, INC., et al.	)	
	)	
Defendants.	)	

Plaintiff Hodell-Natco Industries, Inc. (“Hodell”), in compliance with the Court’s Civil Jury Trial Order [ECF #312], submits the following Trial Brief in preparation for the trial set to commence June 15, 2015.

**I. Trial Brief**

In the interests of judicial economy, Hodell refers the Court to the Joint Trial Brief previously filed by the parties [ECF #245] and Hodell’s Status Report filed May 26, 2015 [ECF #318].

As stated therein, Hodell’s Amended Complaint [ECF #26] asserted five causes of action against Defendants SAP America, Inc. and SAP AG (collectively “SAP”), LSi-Lowery Systems, Inc. (“LSi”) and The IBIS Group, Inc. (“IBIS”): (1) fraudulent inducement; (2) fraud; (3) breach of contract; (4) negligence; and (5) negligent misrepresentation. SAP and LSi/IBIS asserted cross-claims against each other, and LSi/IBIS asserted a counterclaim against Hodell.

Hodell’s negligence claim against both SAP Defendants was dismissed pursuant to a

Motion to Dismiss filed by SAP, as was Hodell's breach of contract claim based upon the Development Agreement. [ECF #61].

At the Motion to Dismiss stage, SAP AG argued that it was not a party to the License Agreement and therefore could not be bound by that agreement. The Court agreed, holding that SAP AG is not a party to the License Agreement, and dismissed Hodell's breach of contract warranty claim as to SAP AG. [*Id.*] The Court subsequently granted summary judgment to LSi and IBIS on Hodell's negligence claim. [ECF #192].

As a result, the remaining claims against SAP are: (1) fraudulent inducement; (2) fraud; (3) breach of contract (against SAP America, Inc. only) relating to the License Agreement; and (4) negligent misrepresentation.

On February 12, 2015, the Court entered an Order of default against IBIS and LSi, thereby entering default against LSi/IBIS pursuant to Fed.R.Civ.P. 55(a) and further dismissing each of the LSi/IBIS cross-claims and counterclaims. [ECF #280].

Hodell has requested that the Court allow Hodell to proffer the testimony of its damages expert, Dr. G. William Kennedy, at trial. Dr. Kennedy's testimony was excluded by Judge Wells on an *in limine* order issued October 13, 2014. Hodell contends that this Order was a clear error of law and that a reconsideration of that Order is necessary to prevent manifest injustice. Hodell should be permitted to proffer Dr. Kennedy's testimony at trial outside the presence of the jury and the Court can then decide if Dr. Kennedy should be permitted to testify. Hodell raised this issue in a timely manner, as the Court's *in limine* order did not issue until October 13, 2014 and, up until the eve of the previously scheduled trial of February 23, 2015, Hodell believed that it would be permitted to proffer Dr. Kennedy's testimony at trial.

SAP has filed a motion *in limine* to preclude Hodell's CEO from testifying as to his own

calculation of damages. This Motion has already been denied by Judge Wells [*See* Order dated January 28, 2015]. SAP's Motion also misstates the law and Otto Reidl's testimony is clearly admissible under Fed.R.Evid. 701. This issue has been fully briefed, and it is Hodell's understanding that the admissibility of Otto Reidl's testimony will be determined at trial within the context of his trial testimony rather than through a pretrial order.

The SAP Defendants have also filed several motions for reconsideration relating to agency, the economic loss doctrine, and Hodell's fraud claims. These motions are untimely as they were filed years after the issues had been decided with finality by Judge Greg White and Judge Lesley Wells. SAP has been heard on these issues multiple times and should not be heard on them again years after the fact.

**II. List of Witnesses**

On February 18, 2015, Hodell filed a list of witnesses it intends to call at trial with the Court [ECF #286]. See attached Appendix 1.

**III. List of Exhibits**

On February 17, 2015, Hodell filed a list of exhibits with the Court [ECF #285]. Hodell has filed a revised Exhibit List to conform to the Court's rulings on the admissibility of exhibits. [ECF #331]. See attached Appendix 2.

**III. Jury Instructions**

Hodell's proposed Jury Instructions are being separately filed. See attached Appendix 3.

**IV. Proposed Voir Dire**

On October 1, 2014, Hodell filed its proposed voir dire with the Court. [ECF #215]. See attached Appendix 4.

Dated: June 10, 2015

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on June 10, 2015, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access the document through the Court's electronic filing system.

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